



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bell Industries, Inc.

File: B-233029

Date: January 25, 1989

DIGEST

1. Protest that agency improperly rejected protester's proposal is denied where the record does not demonstrate that the agency unreasonably concluded that the protester's proposal was unreasonably priced. In any event, the agency could properly resolicit the requirement based on the anticipation of lower prices and increased competition.

2. Protest that agency failed to provide written notice that discussions had ended and that agency improperly advised potential competitor of protester's price is dismissed as untimely where the issues were raised more than 10 days after protester learned of the protest bases. Moreover, protester was not prejudiced thereby.

DECISION

Bell Industries, Inc. protests the rejection as unreasonably priced of the offer it submitted in response to Naval Systems Supply Command request for proposals (RFP) No. N00383-87-R-0558, and the Navy's subsequent decision to resolicit the requirement. Bell also requests reimbursement of the costs it incurred in submitting the protest.

We deny the protest and the claim for costs.

On October 23, 1987, the Navy issued the RFP for the purchase of digital microcircuits, Litton Systems, Inc., part number 971124.211, to Bell.^{1/} On November 2, Bell

^{1/} Because the government lacks adequate data concerning the part, the acquisition was limited to Litton and its approved sources. The RFP was initially issued to three offerors other than Bell, none of which was interested in submitting an offer. During this process the Navy learned that Bell was an approved source and was interested in submitting an offer.

044468/137815

submitted its offer, indicating that it was a dealer, not a manufacturer, and that Transistor Specialties, Inc., (TSI), would manufacture the microcircuits. Subsequently, in response to the Navy's request, Bell submitted Standard Form (SF) 1411, Contract Pricing Proposal cover sheet and supporting documentation. TSI also submitted an SF 1411. These forms were forwarded to the Defense Contract Administration Services Management Area (DCASMA) with a request for a cost/price analysis of Bell's proposal.

In its reply to the request for a cost analysis of Bell's proposal, DCASMA generally concluded that Bell's proposed general and administrative (G&A) rate was too high and was improperly applied by Bell in calculating its proposed price. DCASMA also noted that Bell's effort was essentially to package the item procured from TSI and that Bell did not add any additional work or value to the units. DCASMA recommended that the Navy's attempt to negotiate a price with Bell which was lower than the price Bell offered. DCASMA further recommended that the Navy attempted to purchase the microcircuits directly from TSI in order to save substantial G&A costs.

The contracting officer concurred with the findings of DCASMA. The contracting officer further decided that Bell's proposed profit was too high in light of the fact that Bell's primary function was packaging and Bell therefore suffered minimum cost risk. Accordingly, the contracting officer concluded that the price proposed by Bell was not fair and reasonable. Subsequently, the contracting officer contacted TSI directly to request an offer. However, when TSI indicated that it would only submit an offer if no agreement could be reached with Bell, the contracting officer attempted to negotiate a price with Bell. After two rounds of failed negotiations with Bell, the contracting officer requested and received a proposal from TSI. During this time the Navy also learned from Litton of a third approved source. The Navy now intends to resolicit the microcircuits on a competitive basis from Bell, TSI, and the third source.

On October 3, 1988, Bell protested to our Office that the final target price cited by the Navy during discussions was insufficient to provide Bell with a fair and reasonable profit. On December 1, in the comments it submitted in response to the Navy's protest report, Bell further argued that the Navy failed to follow governing regulations in determining whether Bell's offered price was reasonable. Bell also argued that the Navy failed to provide Bell with written notice that discussions had ended and an opportunity to submit a best and final offer (BAFO). In addition, Bell

contended that the Navy acted improperly by indicating during discussions that Bell must meet a certain price to obtain further consideration, and advising TSI of the status of negotiations with Bell.

Under Federal Acquisition Regulation (FAR) § 15.608(b)(1), a procuring agency may reject all proposals received in response to an RFP if it is determined that all acceptable proposals received are at unreasonable prices. The determination that prices are unreasonable is a matter of administrative discretion which we will not question unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of contracting officials. Shiloh Forestry, B-230582, June 21, 1988, 88-1 CPD ¶ 591. Here, the contracting officer based her decision on her own review of Bell's proposed costs, as well as the cost analysis performed by DCASMA. Our review of the record shows that applicable guidelines were followed in determining whether Bell's proposed costs were reasonable. Thus, for example, the contracting officer and DCASMA considered both Bell's effort on the contract as well as the cost risk to Bell. Bell simply argues the government's target price denied Bell the opportunity to obtain a reasonable profit and questions whether the agency followed applicable guidelines in reviewing Bell's costs. Bell, however, has pointed to no specific deficiency in the cost analysis to demonstrate that the contracting officer's conclusion was unreasonable. Consequently, we see no basis to challenge the contracting officer's conclusion.

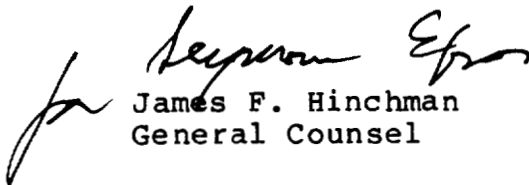
In any event, under FAR § 15.608(b)(4), the procuring agency may reject all proposals where cancellation of the solicitation is clearly in the government's best interest. Pursuant to this regulation, a procuring agency may cancel a negotiated procurement based on the potential for increased competition, Dohrman Machine Production, Inc., B-223307, Aug. 25, 1986, 86-2 CPD ¶ 221, or cost savings. Gradwell Co., Inc., B-230986, July 7, 1988, 88-2 CPD ¶ 19. Thus, once the Navy learned of the possibility of increased competition and cost savings the Navy could properly resolicit the requirement without regard to the reasonableness of Bell's proposed price.

Concerning the issues Bell raised in the comments it submitted on December 1 in response to the Navy's report, Bell's initial protest letter, dated October 3, indicates Bell knew by that date, at the latest, that the Navy had concluded discussions with Bell without providing written notice or issuing a request for a BAFO. The initial protest further demonstrates that Bell knew the Navy intended to solicit an offer from TSI. Consequently, Bell's protest on these issues is untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). In any event, in

view of our conclusion that the Navy properly decided to resolicit, we fail to see how Bell was prejudiced by the Navy's actions during discussions with the firm. Further, contrary to Bell's unsupported contention, there is no indication in the record that Bell's price was revealed to TSI.

Since we have denied the protest, Bell is not entitled to recover the costs it incurred in submitting the protest. Rokach Engineering P.C., B-229680, Feb. 3, 1988, 88-1 CPD ¶ 108.

The protest and the request for costs are denied.


James F. Hinchman
General Counsel